IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 24 OF 2001.

Union of India,
through the Officer In charge,
Military Farm Depot at
Navelim, Margao,
Salcete, Goa. ... Petitioner.

Versus

1. Shri Chandrakant D. Pednekar,
Resident of House No.62
Malbhat, Margao, Goa
(Deceased) through L.Rs.:
1(a) Mrs. Bharti Chandrakant Pednekar,
wife of late Chandrakant D. Pednekar,
House No.251, Dabolim Housing
Board, Margao, Goa.
1(b) Master Sanjog Chandrakant Pednekar,
minor, son of late Chandrakant
Pednekar, represented by his
mother and natural guardian
Mrs. Bharati Chandrakant Pednekar,
resident of Margao, Goa.
1(c) Miss Priyanka Chandrakant Pednekar,
minor, daughter of late
Chandrakant Pednekar,
represented by her mother and
natural guardian Mrs. Bharati
Chandrakant Pednekar,
resident of Margao, Goa.
2. Shri S. B. Panse,
Presiding Officer,
Central Government Industrial
Tribunal No. II,
Post Box No. 1035, G.P.O.
Mumbai, Maharashtra State. .... Respondents.

Mr. E. P. Badrinarayanan, Central Government Standing Counsel for the Petitioner.

Mr. Guru Shirodkar, Advocate for the Respondent No.1(a).

CORAM: J. N. PATEL, J.

DATE: 15th DECEMBER, 2006.

ORAL JUDGMENT:

The petitioner has challenged the Award dated 12.4.1999 passed by the CGIT No.II, Mumbai in Reference No. CGII-2/55 of 1989 under which the Reference was answered in favour of the respondent and the petitioner was directed to reinstate the respondent as M.T. Driver with full back wages and treat him in continuous service.

2. The respondent died on 13.01.06 and the L.R's of the Respondent are contesting the Petition. Therefore so far as the relief of reinstatement is concerned, it does not survive and the only point which arises for determination would be relating to the entitlement of the petitioner to full back wages in terms of the Award.

3. It is not in dispute that the petitioner was initially appointed as temporary driver on daily rate of pay of Rs.14/- per day with effect from 13.03.85 pursuant to the interview held on 12.03.85 by the petitioner in their establishment which is the Military Farm Depot in Navelim,

Margao, Goa. The petitioner terminated the services of the deceased original respondent Chandrakant D. Pednekar with effect from 31.5.88 without following the procedure i.e. he was removed from service without paying him any retrenchment compensation as required under Section 25 F of the I.D. Act and therefore the original respondent raised a dispute which was referred to the CGIT for adjudication as to " Whether the action of the management of Military Farm Depot in terminating the services of Chandrakant as driver with effect from 31.5.88 is justified and to what relief the said workman is entitled to ?"

4. The facts in the case are that the workman was employed as Military driver at daily rate of pay of Rs.14/- per day which was subsequently increased to Rs.16.25 and at the time of his termination he has completed three years and two and half months service is not disputed and therefore his case would stand covered under Section 25 B of the I.D. Act.

5. It was the case of the workman that on 31.05.88 when he went to the office of the petitioner for calculation of his salary he was informed that his salary was reduced and his designation was put as a labourer and as he protested, his services were terminated and therefore according to the workman his services came to be terminated without giving any

retrenchment compensation as required under Section 25 F of the I.D. Act.

6. The petitioner/employer took various pleas before the Tribunal such as the Depot is not an industry and that the Tribunal has no jurisdiction to decide the issue and further that the appointment of the original respondent was purely on temporary basis as M.T. Driver, Grade II which was subsequently filled in on regular basis and therefore his services were no more required, but the respondent/workman failed to accept his dues and left the establishment and therefore he cannot be permitted to claim reinstatement with back wages. It is also contended that during the conciliation proceedings an offer was also made to pay the retrenchment compensation which was not accepted.

7. The Tribunal, after examining the evidence on record found that the petitioner/establishment is an industry and therefore it has jurisdiction to decide the reference, and insofar as the nature of engagement of the respondent/workman was concerned, it was not disputed that the action taken by the management of the petitioner was held to be not justified in terminating the services of the respondent/workman without following the procedure and complying with the conditions for such termination/retrenchment of services i.e. without following the procedure contemplated under Section 25 of the I.D. Act.

8. It can be seen from the impugned order that the petitioner did not contest the matter by leading any evidence as regards the nature of employment and so on which led to the passing of the impugned Award.

9. Mr. Badrinarayanan, learned counsel appearing for the petitioner submitted that the case of the petitioner could not have been entertained by the Tribunal for the reason that the petitioner was not in continuous employment for more than 240 days as can be seen from the attendance register. The petitioner has tried to canvass before the Court that he was engaged as a casual worker and a day's break was given in a week which itself goes to show that he was not in continued employment for a period of 240 days in the preceding year when his services came to be dispensed with and has moved an application before this Court to take on record the documents relating to his attendance (must roll) and the extract of payment of wages register.

10. The submission of Mr. Badrinarayanan was objected by the learned counsel for the original respondent on the ground that no such material was placed before the Tribunal. On the other hand, the matter went uncontested. Even otherwise, it is submitted that the respondent/workman was entitled for a weekly off and in view of the fact

that it is not disputed that on the date his services were terminated, he had put in continuous service of three years and two and half months. The impugned order does not call for any interference.

11. In view of the subsequent development that the original respondent/workman has expired, the relief of reinstatement of service has become infructuous. This Court, after examining the pros and cons of the matter, finds that the petition can be disposed of with a direction to the petitioner to pay a sum of Rs.50,000/- to the L.Rs. of the original respondent who are now substituted as the respondents in the petition against the relief of back wages as that would meet the ends of justice.

12. Taking into consideration that the present respondent is the widow of the original respondent/workman and two minor children, this Court, in order to protect the interest of the minors, so also the widow of the workman, directs the petitioner to deposit a sum of Rs.50,000/- in the nearest Post Office where the respondents are residing by opening a joint monthly income scheme account in their name with Respondent No.1(a) as guardian. The account to be operated for the purpose of withdrawing the monthly interest by the mother Respondent No.1(a) who is the natural guardian of the children and shall not be permitted to be closed till the children attain majority. The principal amount of Rs.50,000/- shall not be

permitted to be withdrawn by the respondents till the minor children attain the age of majority and the account will be renewed from time to time till then on expiry of its maturity period.

13. The amount to be deposited in the Monthly Income Scheme in the nearest Post Office as directed by this Court within a period of eight weeks from the date of disposal of the petition. The petitioner shall also pay the costs of the petition which is quantified at Rs.2500/- which shall be paid in cash to the respondent No.1(a). Rule made absolute in the aforesaid terms.

J. N. PATEL, J.

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